

## SCHEDULES

### SCHEDULE 7

Section 30(10)

#### MERGERS: INTERIM MEASURES

*Interim measures following references under section 22 or 33*

- 1 Part 3 of the 2002 Act (mergers) is amended as follows.
- 2 (1) Section 80 (interim undertakings) is amended as follows.
  - (2) In subsection (1), for “Subsections (2) and (3)” substitute “Subsections (2) and (2A)”.
  - (3) After subsection (2) insert—
    - “(2A) Where the CMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken, it may, for the purpose of restoring the position to what it would have been had the action not been taken or otherwise for the purpose of mitigating its effects, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.”
  - (4) After subsection (2A) insert—
    - “(2B) A person may, with the consent of the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an undertaking under this section.”
  - (5) Omit subsections (3) and (4).
  - (6) In subsection (5), for “Any other undertaking” substitute “An undertaking”.
  - (7) Omit subsection (6).
- 3 (1) Section 81 (interim orders) is amended as follows.
  - (2) In subsection (1) for “Subsections (2) and (3)” substitute “Subsections (2) and (2A)”.
  - (3) After subsection (2) insert—
    - “(2A) Where the CMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken, it may by order, for the purpose of restoring the position to what it would have been had the action not been taken or otherwise for the purpose of mitigating its effects—
      - (a) do anything mentioned in subsection (2)(b) to (d);
      - (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.”
  - (4) After subsection (2A) insert—

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“(2B) A person may, with the consent of the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this section.”

- (5) Omit subsections (3) and (4).
- (6) In subsection (5), for “Any other order” substitute “An order”.
- (7) Omit subsection (6).

*Interim measures: public interest and special interest cases*

- 4 (1) Schedule 7 (enforcement regime for public interest and special public interest cases) is amended as follows.
  - (2) Omit paragraph 1 (interim undertakings).
  - (3) In paragraph 2 (interim orders), after sub-paragraph (2) insert—
    - “(2A) Sub-paragraph (2B) applies where—
      - (a) an intervention notice or special intervention notice is in force, and
      - (b) the Secretary of State or the CMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken.
    - (2B) The Secretary of State or (as the case may be) the CMA may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects—
      - (a) do anything mentioned in sub-paragraph (2)(b) to (d);
      - (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.”
  - (4) In that paragraph, after sub-paragraph (2B) insert—
    - “(2C) A person may, with the consent of the Secretary of State or (as the case may be) the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this paragraph by the Secretary of State or (as the case may be) the CMA.”
  - (5) In that paragraph, in sub-paragraph (4)—
    - (a) omit “or the OFT”,
    - (b) for “by the OFT” substitute “by the CMA”, and
    - (c) omit “or (as the case may be) the OFT”.
  - (6) In that paragraph, in sub-paragraph (8), omit “1 or”.
  - (7) In that paragraph, in sub-paragraph (10), for the words from “the order” to the end of the sub-paragraph substitute “—
    - (a) the Secretary of State or (as the case may be) the CMA has reasonable grounds for suspecting that it is or may be the case that two or more enterprises have ceased to be distinct or that arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct; or

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- (b) the order relates to a special merger situation which has been, or may have been, created.”

(8) In that paragraph, after sub-paragraph (11) insert—

“(12) In this paragraph “pre-emptive action” means action which might prejudice the reference or possible reference concerned under section 45 or (as the case may be) 62 or impede the taking of any action under this Part which may be justified by the Secretary of State’s decisions on the reference.”

*Interim measures: duration of interim orders under section 72*

- 5 (1) Section 72 (initial enforcement orders: completed mergers) is amended as follows.
- (2) Omit subsection (5).
  - (3) In subsection (6)—
    - (a) in the words before paragraph (a), omit “section 81 or”, and
    - (b) in paragraph (a), for the words from “at the end of” to the end of the paragraph substitute “—
      - (i) if the CMA accepts an undertaking under section 80 or makes an order under section 81, on the acceptance of the undertaking or the making of the order, and
      - (ii) otherwise on the final determination of the reference concerned;”.